

R. G. Shannon Administrators, Inc. and Professional, Clerical and Miscellaneous Employees, Local 995, AFL-CIO. Case 28-CA-12044

November 17, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

Upon a charge filed by Professional, Clerical and Miscellaneous Employees, Local 995, AFL-CIO, the Union on June 1, 1993, the General Counsel of the National Labor Relations Board issued a complaint on July 13, 1993, against R. G. Shannon Administrators, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 18, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On October 21, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 31, 1993, notified the Respondent that unless an answer were received by September 8, 1993, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent is now, and has been at all times material, a corporation duly organized under, and existing by virtue of, the laws of the State of Nevada. At all times material, the Respondent has maintained an office and place of business in Las Vegas, Nevada, where it is engaged in business as an administrator of various trust funds on behalf of employers and labor organizations.

During the 12-month period proceeding the issuance of the complaint, the Respondent, in the course and conduct of its business operations, received at its facility in excess of \$500,000 from various trust funds, of which in excess of \$50,000 was directly deposited in banks or with other financial institutions located outside the State of Nevada. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Respondent performing the work described in Article I of the 1991-1994 Agreement, excluding supervisors as defined in the Act.

Since in or about at least 1978, and at all times material, the Union has been the lawfully designated exclusive collective-bargaining representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements between the Respondent and the Union, the most recent of which is effective by its terms of the period March 1, 1991, through February 28, 1994 (the Agreement).

At all times since at least 1978, the Union, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

Since on or about December 1, 1992, and continuing to date, the Respondent has failed and refused, and continues to fail and refuse, to make contributions on behalf on unit employees to the health and welfare fund and the pension funds, and to pay unit employees moneys due for accrued vacation pay pursuant to the Agreement.

The Respondent engaged in the acts and conduct described above without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the unit with respect to such acts and conduct and the effects of such acts and conduct.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively, and is continuing to fail and refuse to bargain collectively, with the Union as the exclusive collective-bargaining representative of the unit, and has thereby en-

gaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1), Section 8(d), and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing since December 1, 1992, to make benefit fund contributions as required by the 1991-1994 Agreement, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979), and to reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since December 1, 1992, to pay employees for accrued vacation pay as required by the 1991-1994 Agreement, we shall order the Respondent to make the unit employees whole for any losses attributable to its unlawful conduct as set forth in *Ogle Protection Service*, supra, with interest to be computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, R. G. Shannon Administrators, Inc., Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Professional, Clerical and Miscellaneous Employees, Local 995, AFL-CIO by failing and refusing to make required contributions to the health and welfare fund and the pension funds and failing and refusing to pay employees in the following unit moneys due for accrued vacation pay pursuant to the 1991-1994 Agreement:

All employees of the Respondent performing the work described in Article I of the 1991-1994 Agreement, excluding supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the 1991-1994 Agreement by making required contributions to the health and welfare fund and the pension funds on behalf of unit employees and by remitting to unit employees all moneys due for accrued vacation pay.

(b) Make the unit employees whole for any losses attributable to its failure, since December 1, 1992, to make the contractually required contributions to the health and welfare fund and the pension funds and to pay unit employees moneys due for accrued vacation pay pursuant to the Agreement, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Las Vegas, Nevada, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 28, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. November 17, 1993

James M. Stephens, Chairman

Dennis M. Devaney, Member

John Neil Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain with Professional, Clerical and Miscellaneous Employees, Local 995, AFL-CIO by failing and refusing to make required contributions to the health and welfare fund and

the pension funds and to pay the employees in the following unit moneys due for accrued vacation pay pursuant to the 1991-1994 Agreement:

All our employees performing the work described in Article I of the 1991-1994 Agreement, excluding supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the 1991-1994 Agreement by making required contributions to the health and welfare fund and the pension funds on behalf of our unit employees and remitting to our unit employees all moneys due for accrued vacation pay.

WE WILL make the unit employees whole for any losses attributable to our failure, since December 1, 1992, to make the contractually required contributions to the health and welfare fund and the pension funds, and to remit moneys due for accrued vacation pay, with interest.

R. G. SHANNON ADMINISTRATORS, INC.